

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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WASHINGTON, D.C. 20554  
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In the Matter of

Prescribing the Authorized  
Unitary Rate of Return for  
Interstate Services of Local  
Exchange Carriers

CC Docket No. 98-166

**COMMENTS  
of the  
GENERAL SERVICES ADMINISTRATION**

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January 19, 1999

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The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released on October 5, 1998. In the NPRM, the Commission seeks comments on whether the low-end adjustment threshold should be revised in this proceeding.

**I. INTRODUCTION**

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. The FEAs require a wide array of interexchange and local telecommunications services. From their perspective as end users, the FEAs have consistently supported the

Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

Until such time as competition provides an effective control over incumbent local exchange carrier ("LEC") prices, however, the Commission's price cap plan must be relied upon to ensure just and reasonable rates. In these Comments, GSA endorses the Commission's tentative conclusion that the low-end adjustment threshold should remain 100 basis points below the rate of return prescribed in this proceeding.<sup>1</sup>

**II. The Low-End Adjustment Threshold Should Be Set  
At 100 Basis Points Below The Rate-of-Return  
Prescribed In This Proceeding**

The low-end adjustment mechanism permits incumbent price cap LECs with rates of return less than a threshold level to increase their prices to a level that would enable them to earn at the threshold level.<sup>2</sup> The Commission established this mechanism to ensure that the LECs would retain the ability "to raise the capital necessary to provide modern, efficient services to customers."<sup>3</sup> The Commission noted that unusually low earnings "may be attributable to an error in the productivity factor, the application of an industry-wide factor to an individual LEC, or unforeseen circumstances in a particular area

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<sup>1</sup> NPRM, para. 55.

<sup>2</sup> Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, FCC 90-314, released October 4, 1990 ("Price Cap Order"), para 147-149.

<sup>3</sup> Id., para. 147.

of the country.”<sup>4</sup> The Commission retained the low-end adjustment mechanism in its last price cap performance review to “guard against our new X-Factor requiring individual LECs to charge unreasonably low rates.”<sup>5</sup>

The Commission established the low-end adjustment threshold at 10.25 percent, or 100 basis points below the simultaneously determined rate of return of 11.25 percent.<sup>6</sup> The Commission noted that 10.25 percent was below the range it identified for the interstate access cost of capital, but above the marginal cost of long-term telephone debt, which was just under 10 percent.<sup>7</sup> The Commission concluded that this threshold “is not likely to be confiscatory, because it should still allow most companies to continue to attract capital and maintain service.”<sup>8</sup> The Commission reasoned that its price cap plan must “present the risk of reduced earnings if the carrier fails to control costs and become more efficient.”<sup>9</sup> For this reason it selected a threshold “below the level of earnings available under traditional rate-of-return regulation, yet not so low as to cause a confiscatory result in the short term.”<sup>10</sup>

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<sup>4</sup> Id.

<sup>5</sup> Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Fourth Report and Order, FCC 97-159, released May 21, 1997, para. 11.

<sup>6</sup> Price Cap Order, para. 165.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id., para. 164.

<sup>10</sup> Id.

As GSA argued in response to a February 1996 Public Notice, it is both logical and equitable for the Commission to adjust the low-end adjustment mechanism when the authorized rate-of-return is represcribed.<sup>11</sup> The lawfulness of the Commission's price cap plan is dependent upon the fact that it was designed to ensure just and reasonable rates. A failure to adjust the low-end adjustment threshold when the LECs' cost of capital changes would break this link to just and reasonable rates.

For example, if the LEC cost of capital were to increase and the low-end adjustment level were to remain unchanged, the LECs might be denied the opportunity to increase their rates even if their existing rates were confiscatory. Certainly the LECs would not remain silent in the face of such a development. The Commission would be awash in emergency petitions and court actions.

The current situation is equally unjust, but in the opposite direction. It is ratepayers rather than LECs, who are injured. As GSA demonstrates in its Direct Case, the cost of capital has fallen sharply and the authorized return should be lowered. Unless the low-end adjustment threshold is also lowered, the LECs will receive a revenue windfall at ratepayers' expense. LECs could find themselves eligible for price increases even though their earnings are already above the newly authorized rate of return. The Commission must protect the interests of regulated telecommunications users and not allow such a condition to develop.

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<sup>11</sup> Rate of Return Inquiry, AAD 96-28, Comments of GSA, March 11, 1996.

## VI. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to set the low-end adjustment threshold at 100 basis points below the rate of return prescribed in this proceeding.

Respectfully submitted,

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January 19, 1999

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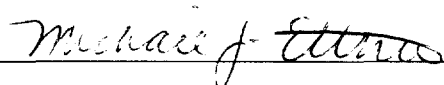
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